



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/172145

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance, a hearing was held on March 22, 2016, at Jefferson, Wisconsin.

The issue for determination is whether the respondent has established that petitioner is liable for an overpayment of Medical Assistance (MA) benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.
2. Petitioner received MA benefits as part of a three-member assistance group during at least the period of December, 2014 – March 31, 2015.

3. Respondent received state wage match information which indicated that petitioner's household income was higher than the respondent had budgeted for MA purposes.
4. The respondent requested earnings verifications from the petitioner; when those were not timely received, the respondent calculated an overpayment of benefits (claim # [REDACTED]) in the amount of \$506.00 based upon average wages identified by the state wage match.
5. The respondent determined that petitioner's household income exceeded MA program limits in at least December, 2014, and continued to exceed limits through March, 2015.
6. On March 4, 2015, the respondent received forms back from petitioner's employer, [REDACTED], as well as the employer of [REDACTED], [REDACTED].
7. Based upon receipt of actual wages, the respondent revised MA overpayment claim # [REDACTED] to \$195.00.
8. Petitioner appealed liability for the MA overpayment by filing a Request for Fair Hearing on February 17, 2016.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's *BC+ Handbook*, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount."

BC+ Handbook, App. 28.4.2.

In a Fair Hearing concerning the propriety of an overpayment determination, the respondent has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The evidence in this record demonstrates that the agency at first determined the overpayment based upon average wages when petitioner did not timely verify her household earnings. Subsequently, the respondent received the requested wage information and recalculated the alleged overpayment based upon actual earnings. The petitioner indicated at hearing that she is not specifically disputing any calculations.

Instead, she contends that she did timely notify the respondent of the change in household income, and the respondent failed to act upon that. She credibly testified that the income change information was faxed to the respondent on September 4, 2014. The respondent was unable to confirm or deny that a fax was received from the petitioner on that date.

I have reviewed the re-calculations, and I observe no error. However, I conclude that the respondent has failed to overcome the petitioner's assertion that the debt here arises from agency error, as opposed to client error. The respondent is not entitled to recover overpaid MA benefit that result from agency error. I find that the petitioner credibly established that it attempted to notify the respondent of the change in income as early as September, 2014, and that the respondent failed to correctly pursue this notification and adjust petitioner's MA budget. The respondent failed to counter petitioner's assertion in this regard. As such, the petitioner is not liable for the overpayment because the asserted debt arose due to a failure by the respondent.

CONCLUSIONS OF LAW

1. Petitioner was overpaid MA from December, 2014, through March, 2015, as a result of agency error.
2. Petitioner is not liable for MA overpayments which arise from agency error.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind MA overpayment claim no. [REDACTED] and to cease recovery of it. The county shall do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 15th day of April, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 15, 2016.

Jefferson County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability